

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

JOSEPH LUCAS,)	
)	
Plaintiff,)	
)	
vs.)	No. 3:23-cv-00056 –JPG
)	
BLANKENSHIP CONSTRUCTION CO.,)	
DOUG BLANKENSHIP, and NATHAN)	
MARLEN,)	
)	
Defendants.)	

DEFENDANT NATHAN MARLEN'S
MOTION TO BAR TESTIMONY OF MARK HALPIN

COMES NOW Defendant, Nathan Marlen, by and through his undersigned attorneys, and moves this Court for an order *in limine* barring Mark Halpin from testifying at trial. In support of his motion, Defendant Marlen states as follows:

1. On February 1, 2024, Plaintiff disclosed that he expects to call Mark Halpin as an expert witness to testify at trial, pursuant to Fed. R. Civ. P. 26(a)(2). A copy of plaintiff's witness disclosure, along with a copy of Mr. Halpin's report, is attached hereto as Exhibit 1.

2. On June 5, 2023, this Court entered a scheduling order that set forth the following relevant deadlines: (a) Plaintiff's experts to be disclosed, along with a written report prepared and signed by the witness pursuant to Federal Rule of Civil Procedure

26(a)(2), by September 1, 2023; and (b) Discovery shall be completed by January 23, 2024.

Doc. No. 27.

3. The aforementioned scheduling order also included a deadline of September 1, 2023, for taking the parties' depositions. When it became apparent to all counsel that these depositions could not be completed by that date, all counsel agreed to suspend that deadline. However, no agreement was reached among counsel on suspending or amending the deadlines to disclose experts.

4. On October 26, 2023, this case was reassigned to the Hon. J. Phil Gilbert, following the recusal of the Hon. Staci Yandle. Doc. No. 50; Doc. No. 51. On October 31, 2023, the Court ordered as follows: "The undersigned now VACATES all settings before Judge Yandle and RE-SETS the Final Pretrial Conference for 6/11/2024 at 9:00 AM with a Jury Trial date of 6/24/2024 at 9:00 AM in Benton Courthouse before Judge J. Phil Gilbert. All other deadlines contained in the scheduling order at Doc [27] remain the same." Doc. No. 52.

5. Plaintiff's disclosure of Mark Halpin as a testifying expert witness is untimely. Even if all counsels' agreement to suspend the party deposition deadline of September 1, 2023 could be construed as an implied agreement to suspend the expert disclosure deadlines as well, the disclosure of Mr. Halpin was not made until after the

close of *all discovery* – a deadline that was initially set on June 5, 2023 and then reaffirmed by this Court on October 31, 2023.

WHEREFORE, for the reasons stated above, Defendant Nathan Marlen respectfully requests that this Honorable Court enter an order barring Mark Halpin from testifying at trial, and for any other relief the Court deems just and proper.

/s/ John P. Cunningham

John P. Cunningham, #6193598

BROWN & JAMES, P.C.

Richland Plaza I, 525 W. Main St., Ste. 200

Belleville, Illinois 62220-1547

618/235-5590; 618/235-5591 (Fax)

jcunningham@bjpc.com; smolla@bjpc.com

and

Joseph A. Bleyer, #6193192

BLEYER AND BLEYER

601 West Jackson Street

P.O. Box 487

Marion, Illinois 62959-0487

618/997-1331; 618-997-6559 (Fax)

jableyer@bleyerlaw.com

Attorneys for Defendant Nathan Marlen

AFFIDAVIT OF SERVICE

I, the undersigned, on the 15th day of May, 2024, electronically filed this document with the United States District Court, Southern District of Illinois which will send electronic notification to each of the following:

Britton L. St. Onge
Jon A. Bierman
Polsinelli PC
100 South Fourth Street, Suite 1000
St. Louis, MO 63102
bstonge@polsinelli.com; jbierman@polsinelli.com
Counsel for Plaintiff

Jeffrey A. Mollet
Thomas G. DeVore
Silver Lake Group, Ltd.
560 Suppiger Way
P.O. Box 188
Highland, IL 62249
jeff@silverlakelaw.com; tom@silverlakelaw.com
*Counsel for Defendants Doug Blankenship
and Blankenship Construction Co.*

A copy of this document is available for viewing and downloading from the ECF system.

Under penalties of perjury as provided by law, I certify that the statements in this affidavit are true.

/s/ John P. Cunningham

30270265